TEXAS PROPERTY CODE CHAPTER 201:

REQ. SIGNATURES

NOT ACHIEVED

Creating, Extending, Renewing, Adding to, or Modifying Restrictions

Application

- A residential real estate subdivision located:
- w/ in the city limits or ETJ of cities with a pop. of more than 100,000 [in the Houston Area: Houston and Pasadena];
- 2) in the unincorporated area of:
 - a) a county with a pop. of 2.4MM or more [i.e., Harris County]; or
 - b) a county with a pop. of 30,000 or more adj. to a county with a population of 2.4MM or more [all counties adj. to Harris County]; or
- 3) in the incorporated area of a county having a pop. of 30,000 or more that is a adj. to a county with a pop. of 2.4MM or more.
- Ch. 201 does <u>not</u> apply to extensions/creations where Restrictions:
 - a) are automatically extended for 10 + year terms and may be waived/terminated by less than 50% + 1 of the owners; or
 - b) provide for an indefinite number of extensions for 10+ year terms by written and filed agreement of less than 50% + 1 of the owners.
- Ch. 201 does <u>not</u> apply to modifications where Restrictions may be modified by less than 75% of the owners.

Starting Over

• If the circulated petition is not signed and acknowledged by the required percentage of owners within one year of recording notice of the petition committee's formation, the petition is void and another petition committee may be formed (§ 201.006(b)) [but Note: § 201.004(b) indicates a 2 year deadline].

Effect of Petition

- If signed by the required %, the petition binds all the Subdivision except:
 - a) **Opt-Out** owners which formally opt-out¹;
 - No Notice owners w/o actual notice of the petition process;
 - Public Property property <u>exclusively</u> dedicated for use by the public or for uses by utilities;
 - Minors/Incompetents property owned by minors or incompetents; and
 - e) Lienholder property owned by lienholders which did not sign the petition (§ 201.009).
- Lienholders and 3rd parties acquiring their property interest after the date the petition is filed (as to consenting property owners) and after the 1-year anniversary date (as to non-consenting but nonobjecting property owners) are bound.
- The contents of the petition take effect on the later of the dates the petition is filed or a date specified by the petition.
- Notice Requirement certificate of compliance w/ notice requirements must be filed of record (§ 201.008).

Petition Committee

- 1) The process begins with the formation of a 3 person petition committee and written notice is filed of record (§ 201.005(a)).
- A petition is then circulated for approval by the owners.

Petition Contents

- The petition sets forth:
 - a) extension of existing Restrictions;
 - b) modifications of the existing Restrictions; or
 - c) the proposed new Restrictions (§§ 201.005, 201.007).

Petition Approval

- To extend or create Restrictions, 50% of the owners must sign. To modify Restrictions, 75% of the owners must sign (NOTE: Owners need not approve to count toward %, only sign).
- Signatures must be acknowledged (i.e., notarized).
- The required percentage may be obtained by counting any one of these criteria:
 - a) Lots;
 - b) Separately owned parcels; or
 - c) Square footage of lots (excluding roads and public areas)
 - (§ 201.006(a) and (b)).
- If the petition proposes to alter a right granted in the Restrictions to either the developer of the Subdivision or ACC representative (or their successors or assigns), that party must consent.

REQ. SIGNATURES ACHIEVED

Notice to Owners

- Notice and a copy of the petition must be sent to all owners by certified mail within 60 days after the petition is filed.
- Additional notice is required by newspaper publication once a week for 2 consecutive weeks.
- The Petition Committee should keep all Return Receipts indefinitely.

WCG

Wilson, Cribbs & Goren, P.C. Attorneys at Law All Rights Reserved© An owner may "opt-out" of the Restrictions by:

- a) **Petition** Signing the petition and affirmatively electing to exclude their property. The petition is required to include an "opt-out" blank to check; or
- b) Lawsuit Suit challenging the petition process filed w/ in 6 months after the filing of the petition; or
- c) Opt-Out Statement Filing a statement affirmatively electing to be excluded from the Restrictions in the real property records within 1 year after actual notice. Evidence of receipt by all owners of the certified mail notice to each owner is critical (§§ 201.009-010).

CHAPTER 201 DEFINITIONS

Restrictions: 1 or more restrictive covenants contained or incorporated by reference in a properly recorded map, plat, replat, declaration, or other instrument filed in the county real property records, map records, or deed records.

Residential real estate subdivision or subdivision: all land within 1 or more maps or plats of land that is divided into 2 or more parts if the maps or plats cover land within a city, town, or village, or within the ETJ of a city, town, or village and are recorded in the deed, map, or real property records of a county, and the land within the maps or plats is or was burdened by restrictions limiting all or at least a majority of the land area covered by the map or plat, excluding streets and public areas, to residential use only; or all land located within a city, town, or village, or within the ETJ of a city, town, or village that has been divided into 2 or more parts and that is or was burdened by restrictions limiting at least a majority of the land area burdened by restrictions, excluding streets and public areas, to residential use only, if the instrument or instruments creating the restrictions are recorded in the deed or real property records of a county.

Owner: an individual, fiduciary, partnership, joint venture, corporation, association, or other entity that owns record title to real property in a subdivision, or the personal rep. of an individual who owns record title to subdivision property.

<u>Petition:</u> 1 or more instruments, however designated or entitled, by which 1 or more of the purposes authorized by Ch. 201 are sought to be accomplished.

Real property records: the applicable records of a county clerk in which conveyances of real property are recorded.

<u>Lienholder:</u> an individual, corporation, financial institution, or other entity that holds a vendor's or deed of trust lien secured by land within the subdivision.

<u>Petition committee</u>: a group of 3 or more owners who file with the county clerk a notice as required by Section 201.005(a) and who prepare and circulate a petition as allowed under Ch. 201.

TEXAS PROPERTY CODE CHAPTER 204:

Creating a Property Owners' Association and Extending, Adding to, or Modifying Existing Restrictions

Application

- A residential subdivision located:
 - 1) in a county with a population of 2.8MM or more [Harris County];
 - in a county with a population of 250,000 or more that is adjacent to the Gulf of Mexico and that is adjacent to a county having a population 2.8MM or more [Galveston and Brazoria Counties]; or
- 3) in a county with a population of 275,000 or more that:
 - is adjacent to a county with a population of 3.3MM or more; and
 - contains part of a national forest [Montgomery County].
- No need to comply with TEX. PROP. CODE Ch. 201.
- Excludes property zoned or used as commercial, industrial, apartments or condominiums.
- Applies even if no modification provision contained in the Restrictions, if extension provision is included

Does the Subdivision have a POA?

• In subdivisions where the Restrictions do not provide for a POA and require more than 60% owner approval to add to or modify the Restrictions, a POA may be added to the restrictions through the petition process below (§ 204.006(a)).

YES
RESTRICTION
AMENDMENT
PROCESS
("RA")

NO POA CREATION PROCESS ("PC")

Petition Committee to Create POA
 The petition process begins with the formation of a 3 person petition committee pursuant to TEX. PROP.
 CODE § 201.005 and written notice is filed of record (§ 204.006(a)(1)).

POA to Amend Restrictions

- The POA may vote for the modification of its Restrictions. (§ 209.0041(h)).
- The vote is subject to the voting process outlined in Ch. 209 of the Prop. Code.
- A petition will not suffice, and an actual vote requiring approval of 67% of the total votes allocated to the association is required to amend, unless the dedicatory instruments provide for a lower percentage.

Petition Approval

- The petition must be approved by the owners (excluding lienholders, contract purchasers, and mineral owners) of at least 75% of the <u>property</u> (not owners) in the Subdivision <u>or</u> a smaller percentage required by the Restrictions <u>and</u> filed of record (§ 204.005(b)).
- Where a single POA represents multiple sections of a neighborhood with separate Restrictions, approval may be on a section-by-section basis or based on the total number of properties in the POA's jurisdiction (§ 204.005(c)).

RA

PC

NOT APPROVED

Starting Over

- If the petition is not approved by the required percentage of owners, the petition is void and a new petition may be circulated.
- No deadline to obtain approval.

APPROVED

Petition Procedure

- A petition committee that circulates a
 petition must notify all record owners
 of property in the Subdivision in
 writing of the proposed extension,
 addition to, or modification of the
 existing restrictions.
- Notice may be hand-delivered to residences in the Subdivision or sent by regular mail to the owner's last known mailing address according to POA records.
- The approval of multiple owners of a property may be reflected by the signature of a single co-owner (§§ 204.006(a)(3), 204.005(e)).

Petition Contents

The petition modifies the Restrictions for

POA with mandatory membership,

the sole purpose of creating and operating a

mandatory regular or special assessments,

owners in the Subdivision (§ 204.006(a)).

The petition requires owner approval.

and equivalent voting rights for each of the

Petition Approval

 The petition must be approved by the owners (excluding lienholders, contract purchasers, and mineral owners) of at least
 60% of the property (not owners) in the Subdivision, and filed of record (§ 204.006(a)(2)).

NOT APPROVED

Starting Over

 If the circulated petition is not approved by the required percentage of owners within one year of recording notice of the petition committee's formation, the petition is void and another petition committee may be formed (§ 204.006(b)).

APPROVED

- Effect of Petition Approval
 If approved, the petition is binding on all properties in the Subdivision to which Ch. 204 is applicable (§ 204.006(c)).
- Unlike Tex. Prop. Code Ch. 201, there is no opt out provision!
- A POA created by the POA CREATION PROCESS must then utilize the RESTRICTION AMENDMENT PROCESS of Chapter 209 to modify its Restrictions.



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CHAPTER 204 DEFINITIONS

Restrictions: 1 or more restrictive covenants contained or incorporated by reference in a properly recorded map, plat, replat, declaration, or other instrument filed in the county real property records, map records, or deed records.

Residential real estate subdivision or subdivision: all land within 1 or more maps or plats of land that is divided into 2 or more parts if the maps or plats cover land within a city, town, or village, or within the ETJ of a city, town, or village and are recorded in the deed, map, or real property records of a county, and the land within the maps or plats is or was burdened by restrictions limiting all or at least a majority of the land area covered by the map or plat, excluding streets and public areas, to residential use only; or all land located within a city, town, or village, or within the ETJ of a city, town, or village that has been divided into 2 or more parts and that is or was burdened by restrictions limiting at least a majority of the land area burdened by restrictions, excluding streets and public areas, to residential use only, if the instrument or instruments creating the restrictions are recorded in the deed or real property records of a county.

Owner: an individual, fiduciary, partnership, joint venture, corporation, association, or other entity that owns record title to real property in a subdivision, or the personal rep. of an individual who owns record title to subdivision property.

Petition: 1 or more instruments, however designated or entitled, by which 1 or more actions relating to restrictive covenants are sought to be accomplished.

Property Owners' Association ("POA"): a designated representative of the owners of property in a subdivision and may be referred to as a "homeowners association," "community association," "civic club," "association," "committee," or similar term contained in the restrictions. The membership of the association consists of the owners of property within the subdivision. The association must be nonprofit and may be incorporated as a Texas nonprofit corporation. An unincorporated association may incorporate under the Texas Non-Profit Corporation Act (Sec. 22.001 et seq., Business Organization Code). The association's board of directors or trustees must be elected or appointed in accordance with the applicable provisions of the restrictions and the association's articles of incorporation or bylaws.

Real property records: the applicable records of a county clerk in which conveyances of real property are recorded.

Lienholder: an individual, corporation, financial institution, or other entity that holds a vendor's or deed of trust lien secured by land within the

Dedicatory instrument: each governing instrument covering the establishment, maintenance, and operation of a residential subdivision, planned unit development, condominium or townhouse regime, or any similar planned development. The term includes a declaration or similar instrument subjecting real property to restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association, to properly adopted rules and regulations of the POA, or to all lawful amendments to the covenants, bylaws, instruments, rules, or

Restrictive covenant: any covenant, condition, or restriction contained in a dedicatory instrument, whether mandatory, prohibitive, permissive, or

Regular assessment: an assessment, charge, fee, or dues that each owner of property within a subdivision is required to pay to the POA on a administrative. regular basis and that are to be used by the association for the benefit of the subdivision in accordance with the original, extended, added, or modified restrictions.

Special assessment: an assessment, charge, fee, or dues that each owner of property within a subdivision is required to pay to the POA, after a vote of the membership, for the purpose of paying for the costs of capital improvements to the common areas that are incurred or will be incurred by the association during the fiscal year. A special assessment may be assessed before or after the association incurs the capital improvement costs.

CHAPTER 204: STATUTORY POWERS OF A PROPERTY OWNERS' ASSOCIATION

Unless otherwise provided by the restrictions or the association's articles of incorporation or bylaws, the POA, acting through its board of directors or trustees, may:

- (1) adopt and amend bylaws;
- (2) adopt and amend budgets for revenues, expenditures, and reserves and collect regular assessments or special assessments for common expenses from property owners;
- (3) hire and terminate managing agents and other employees, agents, and independent contractors;
- (4) institute, defend, intervene in, settle, or compromise litigation or administrative proceedings on matters affecting the subdivision;
- (5) make contracts and incur liabilities relating to the operation of the subdivision and the POA;
- (6) regulate the use, maintenance, repair, replacement, modification, and appearance of the subdivision;
- (7) make additional improvements to be included as a part of the common area;
- (8) grant easements, leases, licenses, and concessions through or over the common area;
- (9) impose and receive payments, fees, or charges for the use, rental, or operation of the common area and for services provided to property
- (10) impose interest, late charges, and, if applicable, returned check charges for late payments of regular assessments or special
- (11) if notice and an opportunity to be heard are given, collect reimbursement of actual attorney's fees and other reasonable costs incurred by the POA relating to violations of the subdivision's restrictions or the POA's bylaws and rules;
- (12) charge costs to an owner's assessment account and collect the costs in any manner provided in the restrictions for the collection of assessments;
- (13) adopt and amend rules regulating the collection of delinquent assessments and the application of payments;
- (14) impose reasonable charges for preparing, recording, or copying amendments to the restrictions, resale certificates, or statements of unpaid assessments;
- (15) purchase insurance and fidelity bonds, including directors' and officers' liability insurance, that the board considers appropriate or
- (16) if the restrictions allow for an annual increase in the maximum regular assessment without a vote of the membership, assess the increase annually or accumulate and assess the increase after a number of years;
- (17) subject to the requirements of the Texas Non-Profit Corporation Act (Sec. 22.001 et seq., Business Organization Code) and by majority vote of its board of directors, indemnify a director or officer of the POA who was, is, or may be made a named defendant or respondent in a proceeding because the person is or was a director;
- (18) if the restrictions vest the architectural control authority in the POA or if the authority is vested in the POA under Section 204.011:
 - (A) implement written architectural control guidelines for its own use or record the guidelines in the real property records of the applicable county; and
 - (B) modify the guidelines as the needs of the subdivision change;
- (19) exercise other powers conferred by the restrictions, its articles of incorporation, or its bylaws;
- (20) exercise other powers that may be exercised in this state by a corporation of the same type as the POA; and
- (21) exercise other powers necessary and proper for the governance and operation of the POA.

TEXAS PROPERTY CODE CHAPTER 209

Modifying Existing Restrictions in Certain Subdivisions

Wilson, Cribbs & Goren, P.C. Attorneysat Law

Application

- A residential subdivision
 - Subject to restrictions or a declaration that authorize a Property Owners' Association ("POA") to collect regular or special assessments;
 - Where mandatory membership in the POA is required for all or a majority of the residential property owners in the subdivision;
 - Regardless of the title or name of the of the POA;
- And which is not a condominium development;
- And which is not located in the Woodlands or Las Colinas.
- Chapter 209 only applies to modifications and not extensions of restrictive covenants.

Tex. Prop. Code § 209.003 (Vernon 2011).

Any Other Method

Look to Declaration or Bylaws

for representative or delegated

voting procedure and follow.

Vote Required

- If Chapter 209 applies to the subdivision, a vote is required for any
 modification of the dedicatory instruments, unless the modification
 takes place during the "development period."
 (§ 209.0041(h) & (d)).
- Any vote to modify is required to have 67% approval of the total number of votes allocated to the POA, unless the declaration requires a lesser percentage, in which case the lower percentage controls. (8 209,004 I(h)).
 - Chapter 209 controls, and regardless of the requirements in any dedicatory instruments, the percentage required for approval may never be more than 67%. (§ 209.0041).

Voting Rights

- All property owners have the right to vote, despite language to the contrary in the dedicatory instruments. (8 209 0059)
- A POA may not restrict a property owner's right to vote solely because there is a pending enforcement action against the property owner, or because the property owner is delinquent on assessments, fees or fines. (§ 209.005).

Voting Procedure

- A vote for modification of the dedicatory instruments may be held either:
 - o in person or by proxy at a meeting of the property owners' association;
 - by absentee ballot;
 - by electronic ballot; or
 - by any method of representative or delegated voting provided by a dedicatory
- All votes must be in writing and signed by the owner. (§ 209.0058 (a)).
- o Electronic votes will be deemed signed and in writing. (§ 209.0058 (b)).

Absentee Ballot

- An absentee ballot may be counted as an owner present and voting at a meeting for purposes of a quorum only as to those items appearing on the ballot. (\$209,00593 (b)).
- If the owner who submitted an absentee ballot attends a meeting to vote, his absentee ballot may not be counted. (8209.00593 (b)).
- The absentee ballot may not be counted if at the meeting the vote is upon language that is not exactly the same as that appearing on the ballot.
- Solicitation for absentee ballots must include:
 - an absentee ballot that contains each proposed action and provides an opportunity to vote for or against each proposed action
 - instructions for delivery of the completed absentee ballot, including the delivery location; and
 - o the following language: "By casting your vote via absentee ballot you will forgo the opportunity to consider and vote on any action from the floor on these proposals, if a meeting is held. This means that if there are amendments to these proposals your votes will not be counted on the final vote on these measures. If you desire to retain this ability, please attend any meeting in person. You may submit an absentee ballot and later choose to attend any meeting in person, in which case any in-person vote will prevail."

Electronic Ballot

- An electronic ballot may be given by:
 - o E-mail;

In Person or By Proxy

Owners who intend to vote by proxy must designate their proxy via proxy form.

o 67% of those present will not suffice, if all votes are not represented at the meeting, either in person, by proxy, absentee ballot, or electronic ballot. If property owner attends a meeting to vote, but previously delivered an electronic or absentee ballot, the previously delivered electronic or absentee ballot may not be

Must have 67% approval of total votes outstanding in the POA to amend dedicatory

Provide notice of meeting and specific items upon which vote will be held to

Include a ballot and proxy form to all owners in advance of meeting.

counted, and his vote at the meeting will control. (§ 209.00593 (b)).

Hold the meeting of the POA and conduct vote.

instruments. (§ 209.0041(h)).

- Facsimile; or
- o Posting on a website.
- Any method of electronic vote must identify the property owner submitting the ballot and allow the property owner to receive a receipt and
 copy of the ballot submitted. (§ 209.00593 (d)).
- An electronic ballot may be counted as an owner present and voting at a meeting for purposes of a quorum only as to those items appearing on the ballot. (\$209.00593 (b)).
- If the owner who submitted an electronic ballot attends a meeting to vote, his electronic ballot may not be counted. (§209.00593 (b)).
- The electronic ballot may not be counted if at the meeting the vote is upon language that is not exactly the same as that appearing on the

Posting on website

- May be used as the sole method of voting or to substitute for a property owner's vote at a meeting of the POA.
- The POA may set up a website upon which the ballots are posted and through which owners may cast their electronic ballots, or save/print the ballot and submit them by other acceptable means.
- If a POA posts ballots on a website, it must send notice to the owners with instructions on obtaining
 access to the posted ballot.

\$ 209.00593.

E-mail

- May be used as the sole method of voting or to substitute for a property owner's vote at a meeting of the POA.
- If the POA intends to use email as the sole method for voting:
- The POA should email a ballot with options to vote for or against each of the proposed modifications to all of the owners.
- The owners should send responsive emails that clearly identify themselves, and that include a copy of the ballot with their votes for each item clearly identified
- The POA should also provide each owner who submits an email ballot an email confirmation confirming the receipt of the owner's vote, and offer to provide the owner with a copy of the ballot he submitted.

§ 209.00593.

<u>Facsimile</u>

- May be used as the sole method of voting or to substitute for a property owner's vote at a meeting of the POA.
- The POA should provide a copy of the ballot to the owners and a facsimile number at which owners may submit their votes
- Owners should fax a copy of their votes to the designated number and keep the fax confirmation and original copy of their ballot submitted.
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TEXAS PROPERTY CODE CHAPTER 209

Modifying Existing Restrictions in Certain Subdivisions

CHAPTER 209 DEFINITIONS

<u>Assessment</u>: a regular assessment, special assessment, or other amount a property owner is required to pay a property owners' association under the dedicatory instrument or by law.

Board: the governing body of a property owners' association.

Declaration: an instrument filed in the real property records of a county that includes restrictive covenants governing a residential subdivision.

<u>Dedicatory instrument</u>: each governing instrument covering the establishment, maintenance, and operation of a residential subdivision. The term includes restrictions or similar instruments subjecting property to restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association, to properly adopted rules and regulations of the property owners' association, and to all lawful amendments to the covenants, bylaws, rules, or regulations.

***H.B. 1821 (effective 1/1/2012) Changing § 202.001 Definition:

"<u>Dedicatory instrument</u>" means each document governing the establishment, maintenance, or operation of a residential subdivision, planned unit development, condominium or townhouse regime, or any similar planned development. The term includes a declaration or similar instrument subjecting real property to:

- (A) restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association;
- (B) properly adopted rules and regulations of the property owners 'association; or
- (C) all lawful amendments to the covenants, bylaws, instruments, rules, or regulations

Lot: means any designated parcel of land located in a residential subdivision, including any improvements on the designated parcel.

Owner: a person who holds record title to property in a residential subdivision and includes the personal representative of a person who holds record title to property in a residential subdivision.

Property owners' association or association ("POA"): an incorporated or unincorporated association that:

- (A) is designated as the representative of the owners of property in a residential subdivision;
- (B) has a membership primarily consisting of the owners of the property covered by the dedicatory instrument for the residential subdivision; and
- (C) manages or regulates the residential subdivision for the benefit of the owners of property in the residential subdivision.

<u>Regular assessment</u>: an assessment, a charge, a fee, or dues that each owner of property within a residential subdivision is required to pay to the property owners' association on a regular basis and that is designated for use by the property owners' association for the benefit of the residential subdivision as provided by the restrictions.

<u>Residential subdivision or subdivision</u>: a subdivision, planned unit development, townhouse regime, or similar planned development in which all land has been divided into two or more parts and is subject to restrictions that:

- (A) limit a majority of the land subject to the dedicatory instruments, excluding streets, common areas, and public areas, to residential use for single-family homes, townhomes, or duplexes only,
- (B) are recorded in the real property records of the county in which the residential subdivision is located; and
- (C) require membership in a property owners' association that has authority to impose regular or special assessments on the property in the subdivision.

<u>Restrictions</u>: one or more restrictive covenants contained or incorporated by reference in a properly recorded map, plat, replat, declaration, or other instrument filed in the real property records or map or plat records. The term includes any amendment or extension of the restrictions.

Restrictive covenant: any covenant, condition, or restriction contained in a dedicatory instrument, whether mandatory, prohibitive, permissive, or administrative.

Special assessment: an assessment, a charge, a fee, or dues, other than a regular assessment, that each owner of property located in a residential subdivision is required to pay to the property owners' association, according to procedures required by the dedicatory instruments, for:

- (A) defraying, in whole or in part, the cost, whether incurred before or after the assessment, of any construction or reconstruction, unexpected repair, or replacement of a capital improvement in common areas owned by the property owners' association, including the necessary fixtures and personal property related to the common areas;
- (B) maintenance and improvement of common areas owned by the property owners' association; or
- (C) other purposes of the property owners' association as stated in its articles of incorporation or the dedicatory instrument for the residential subdivision.

DEED RESTRICTIONS CHECKLIST

SUBDIVISION:
ORIGINAL PLAT RECORDED AT:
RE-PLATS (IF ANY) RECORDED AT:
RESTRICTIONS RECORDED AT:
AMENDMENTS TO RESTRICTIONS (IF ANY) RECORDED AT:

Q: Do my restrictions	YES	NO	Things to consider	Questions/Concerns
have an expiration date?	When do they expire?		 If your restrictions do not expressly state when they expire, they are effective until otherwise terminated by the lot owners. Many restrictions provide for an initial term, then automatic renewals (usually for 10 year terms). If your restrictions have already expired, refer to the Tex. Property Code Ch. 201 procedure chart to see how you can create new restrictions. If your restrictions expire soon, check to see if there is a procedure for extending the term, or consider using Tex. Property Code Chapters 201 or 204. 	
have a procedure to extend the term?	Section		> If your restrictions do not provide a procedure to extend the term, you may use the amendment procedures in your restrictions or Tex. Property Code Chapters 201 or 204 to do so.	
regulate use?	Section		If your restrictions do not already regulate use (e.g., single family residential), consider amending them to do so. The City of Houston will enforce use restrictions at no cost to you!	
regulate lot size?	Section		 If your restrictions do not already regulate lot size (e.g., no structure may be built on any lot smaller than 5,000 sq. ft.), consider amending them to do so. This is another type of restriction the City will enforce! If your neighborhood is located inside the Beltway 8 loop, refer to the Prevailing Lot Size procedure chart for a great way to establish this type of restriction blockby-block. 	
regulate setback lines?	Section		 If your restrictions do not already regulate setbacks (e.g., no structure may be built closer than 10 ft. from any adjoining property line), consider amending them to do so. This is another type of restriction the City will enforce! If your neighborhood is located inside the Beltway 8 loop, refer to the Special Minimum Building Line procedure chart for a great way to establish this type of restriction block-by-block. 	

Q: Do my restrictions	YES	NO	Things to consider	Questions/Concerns
regulate the size, type or number of structures per lot?	Section		If your restrictions do not already regulate size, type, or number of structures per lot, consider amending them to do so. These are more types of restriction the City will enforce!	
regulate the direction a structure must face?	Section		If your restrictions do not already regulate orientation (e.g., all homes must face north or south), consider amending them to do so. This is another type of restriction the City will enforce!	
create a property owner's association ("POA")?	Section		POA, refer to Tex. Property Code Ch. 204 procedure chart for a way to create one (or use the amendment procedures in your restrictions if they are more favorable). Once you have created a POA, you may then use the Ch. 204 petition process to amend your restrictions.	
have a procedure to modify the restrictions?	Section		 If your restrictions do not contain a procedure for modification, consider using Tex. Property Code Ch. 204 to do so. You will have to create a POA first, but amendments under Ch. 204 are binding on all lot owners! Tex. Property Code Ch. 201 is available to some areas without POAs, but is cumbersome and not all owners are necessarily bound. If your restrictions do allow for modification, read carefully to make sure you are not in a "Freeze-out" Period. Some restrictions limit modifications and extensions to specified time periods (e.g., 6 months prior to an automatic renewal date). 	
have performance standards for development?	Section		Height limit, open space, construction materials, pervious area, etc., are all examples of additional performance standards (but not enforced by the City); typically non-discretionary limitations on development.	
create an architectural control committee ("ACC")?	Section		 An ACC is an appointed/elected panel which exercises discretionary authority to ensure compliance of new construction and remodeling of existing structures with the restrictions and to ensure consistency of architectural design. Modifying restrictions to add an ACC where none has existed before can be a difficult and divisive task, unless the ACC has significantly limited discretion. Consider limiting ACC discretion to ensuring that stated performance standards have been satisfied. 	

Q: Do my restrictions	YES	NO	Things to consider	Questions/Concerns
have a variance procedure for unusual circumstances?	Section		 If your restrictions do not have a variance procedure, consider adding one. This will give your restrictions the flexibility to deal with unusual circumstances of specific property where unusual hardship would occur from strict compliance. Unforeseen changes in use, construction techniques and technological advances make variance procedures practical for any subdivision. 	
have mandatory assessments?	Section	es l'Anguille le le contraction de la contractio	A POA needs funding to be effective. Exceptions may be provided for the elderly. Assessments may be fixed, relate to value (HCAD) or be set by a POA (usually with specific limits for annual increases) Where concerns are raised about liens, consider making the liens only judicially enforceable and add safeguards for the elderly. In some cases the best course is to eliminate any lien but retain a legally enforceable assessment.	

OTHER HELPFUL DEED RESTRICTION RESOURCES

- City of Houston Deed Restriction Hotline 832-393-6333.
- Gity of Houston General Information on Deed Restrictions http://www.houstontx.gov/legal/deed.html.
- City of Houston Deed Restriction Pro Bono Program Provides free legal assistance to qualifying neighborhoods. To qualify, a subdivision must meet all of the following criteria:
 - 1) Average home value is less than the City average;
 - 2) Subdivision does not have mandatory assessment fees; and
 - 3) At least 51% of the properties are occupied by homeowners.

For more information, visit the City of Houston's website at www.houstontx.gov/planning or call 713.837.7701.

- To view deed restriction articles written by Reid Wilson, visit the Wilson, Cribbs & Goren, P.C. website at www.wcglaw.net.
- Resources for homeowners' associations can be found on the Community Associations Institute website at www.caionline.org.
- Get a copy of your deed restrictions. Copies of deed restrictions for your subdivision are available for a nominal fee from the
 County Clerk of the county in which you reside. Harris County residents should contact: Harris County Clerk, 201 Caroline, 3rd
 Floor, Houston, Texas 77002.





CITY OF HOUSTON DEED RESTRICTION COMPLAINT FORM

ABOUT THE VIOLATION

Date:		Council District:				
Type of	Violation: Business Setbac	k 2nd Res	sidence	Vehicle	Other	
Address	of Violation:		Zip:			
	and / or Property Owner's Name:					
	on of Violation (include days & ti					
please at	f you have any photographs or oth tach to the complaint form. Thank THE SUBDIVISION		n pertaining	g to the deed res	striction violation,	
Subdivisi	on:			Section	1	
Civic Clu	b / Homeowner's Association:					
ABOUT :	THE CONTACT PERSON					
Name:						
	Address:		``	Zi	p:	
	mber:					
Mail To:	City of Houston Legal Departm Neighborhood Services Division Deed Restriction Enforcement T P.O. Box 368	ent n	ure of Conta	act Person / Rep	resentative	
	Houston, Texas 77001-0368		Deed Res	triction Hotline:	(832) 393-6333	

MINIMUM LOT SIZE AND SETBACK PROCESS

Application Requirements

- A proposed area, including at least 1 blockface and no more than 2 opposing blockfaces. A blockface is either side of a street and the intersection of one street to the next street (or the cul-de-sac of a dead end street);
- Sketch showing lots, addresses and land use in the proposed area;
- Setback lines / lot size for each lot in the area;
- Petition signed by an owner of property within the proposed area; and
- Evidence of support, usually a petition signed by area owners.
- NOTE: The <u>Planning Dept.</u> will calculate the minimum building line / lot size for the proposed area. ¹

Owners may protest by filing a written notice with the Planning Dept. within 30 days of the date (not receipt) of the notice letter.

Protest

No

Protest

Notice to Owners

- 10 days after its determination that an application is complete, the Planning Dept. will notify all owners in the proposed area (according to tax rolls) by U.S. Mail.
- Additional notice by 2 signs.

Public Hearing

If there is a protest, or any of the applicable requirements are not satisfied, the Planning Dept. will set the application for a public hearing before the Planning Commission.

- The Commission shall schedule the public hearing within 30 days after referral by the Planning Dept.
- Notice of the public hearing will be given to each owner at least 15 days beforehand.
- Owners or any other member of the public may speak or present information in writing.

Planning Commission Review

The Commission shall recommend the application for City Council approval only if it meets the following criteria:

- Area boundaries include all properties within at least 1 block face and no more than 2 opposing block faces;
- More than 60% of the lots are developed with <u>single</u> <u>family residential units</u> (setback) or developed w/ or restricted to not more than 2 single family residential units per lot;
- "Sufficient support"
 (majority signing a petition is not required);
- Approval furthers "the goal of preserving the building line / lot size character of the area"; and
- The area has a "building line character" / "lot size character" that can be preserved by the est. of a min. building line / lot size, taking into account certain factors such as age and architectural features of structures in the neighborhood.

If the Commission does <u>not</u> recommend the application for City Council approval, that decision is <u>final</u>.

Not Recommended

Recommended

Final Approval by City Council

- City Council shall consider the application (based on the foregoing criteria). without another public hearing.
- Approval requires a majority vote of City Council in attendance.
- · An ordinance approves the application.
- A certified copy of the ordinance is recorded in the Real Property Records by the Planning Dept.
- The ordinance is effective for 20 years, unless earlier terminated by City Council.
- If no City Council action within 180 days after filing, any intervening development is not subject to the special building line / minimum lot size requirement.

Planning Dept. Approval
If no protest, AND the owners of 51% of the lots / tracts within the proposed area sign a supporting petition, the Planning Dept. will administratively approve IF the application meets the applicable requirements and refer application to City Council for final approval.



Wilson, Cribbs & Goren, P.C. Attorneys at Law ¹ The minimum building line will be the constructed building line farthest from the street that the constructed building line of at least 60% of the structures in the proposed area is the same as or farther from the street than, as measured from the property line to the closest point nearest to the property line.

The minimum lot size will be the largest existing lot size that lots in 70% (60% if the proposed area is within a properly designated historic district) of the proposed area are equal to or greater than.

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